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Grange Debris Box and Wrecking Company, Inc. and Teamsters, Local 624. Case 20–CA–32679

November 30, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

This is a refusal-to-bargain case in which the Respondent is contesting the Union’s certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on August 31, 2005, the Acting General Counsel issued the complaint on September 7, 2005, alleging that the Respondent has violated Section 8(a)(1) and (5) of the Act by refusing the Union’s request to bargain following the Union’s certification in Case 20–RC–17987. (Official notice is taken of the “record” in the representation proceeding as defined in the Board’s Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On September 26, 2005, the Acting General Counsel filed a Motion for Summary Judgment. On September 27, 2005, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contends that the Union’s certification is invalid because the Board erred in affirming the Regional Director’s finding in the representation proceeding that the Respondent’s drivers are employees within the meaning of Section 2(3) of the Act, rather than independent contractors.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accord-

ingly, we grant the Acting General Counsel’s Motion for Summary Judgment.¹

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a California corporation with an office and place of business in San Rafael, California, has been engaged in the business of renting debris box containers to commercial customers and directly to individual customers.

During the 12-month period ending August 31, 2005, the Respondent, in conducting its business operations described above, performed services valued in excess of \$50,000 to other businesses within the State of California who are directly engaged in interstate commerce.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Teamsters, Local 624 (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held March 10, 2005, the Union was certified on July 21, 2005, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time truck drivers and yard employees employed by the Employer at its San Rafael, California facility; excluding office clericals, managerial employees, guards and supervisors within the meaning of the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

¹ We find no merit in the Respondent’s contention, set forth in its opposition to the Acting General Counsel’s motion, that the instant case should be consolidated with two other unfair labor practice charges filed against the Respondent, which are apparently being investigated by the Region. One of the additional charges assertedly alleges separate violations of Sec. 8(a)(1) of the Act, and the other charge alleges that the Respondent violated Sec. 8(a)(5) of the Act by making unilateral changes to employees’ terms and conditions of employment, engaging in direct dealing with employees, and refusing to provide requested information. Thus, the additional charges present issues that differ substantively from the complaint allegations in the instant case, which involve the Respondent’s refusal to bargain with the Union in order to test the certification issued in Case 20–RC–17987. In any event, the General Counsel has wide discretion in determining whether or not to consolidate proceedings, and the Respondent has failed to show an arbitrary abuse of that discretion. See *Service Employees Local 87 (Cresleigh Management)*, 324 NLRB 774 (1997).

B. Refusal to Bargain

On about July 28, 2005, the Union, by letter, requested that the Respondent recognize and bargain collectively with it as the exclusive collective-bargaining representative of the certified unit. Since about August 30, 2005, the Respondent has failed and refused to recognize and bargain with the Union.

CONCLUSION OF LAW

By failing and refusing since August 30, 2005, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(1) and (5) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Grange Debris Box and Wrecking Company, San Rafael, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Teamsters, Local 624 as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time truck drivers and yard employees employed by the Employer at its San Rafael, California facility; excluding office clericals, managerial employees, guards and supervisors within the meaning of the Act.

(b) Within 14 days after service by the Region, post at its facility in San Rafael, California, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 30, 2005.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 30, 2005

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with Teamsters, Local 624 as the exclusive bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time truck drivers and yard employees employed by us at our San Rafael, California facility; excluding office clericals, managerial employees, guards and supervisors within the meaning of the Act.

GRANGE DEBRIS BOX AND WRECKING
COMPANY, INC.